

CIRCUIT CLERKS - Duty to include all costs in criminal costs bills.

4-9

March 27, 1934.



Honorable Bert Maple
Clerk of the Circuit Court
Holt County
Oregon, Missouri

Dear Sir:

We have your request of March 1st, 1934, for an opinion as follows:

"Would like to know the proper and legal duties and actions of a Circuit Clerk under the following conditions, a defendant plead guilty to a misdemeanor and was fined by the court. Defendant appears before the Clerk in open court with money in hand to pay to Clerk said fine and costs. The Court will not let Clerk receive said fine and costs but directs clerk to make out fee bill and give to Sheriff and said Sheriff to collect same after adding ten per cent. It seems that the Court read his authority from the latter part of Section 11791 R. S. 1929. Does that part of said Section apply to a case of this kind or to the costs as before set out in Section in regard to the transportation etc., of prisoners?

In case of Civil suits or criminal, where the Sheriff or other officer has made an error in his charges by charging too much for some service, that is more than the Statutes provides, is it the right or duty of the clerk to correct or try to correct said errors rather than make the party who pays the costs, pay more than they should? Or in Criminal cases perhaps the Prosecuting Attorney or Judge

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does not know whether the mileage charged is proper or an overcharge, and would not be able to justly audit same, does the clerk have the right or is it any of his concern to attempt to correct same?

We will subdivide this opinion into two divisions:

1st. Fees due the sheriff.

2nd. Duties of the circuit clerk in making out costs bills.

I.

FEES DUE THE SHERIFF.

The Legislature has created a complete system for the collection of criminal costs, keeping a record thereof, the payment of such costs to the county treasurer at stated intervals, and the disbursement of such costs to the owners thereof with certain limitations by the county treasurer. The pertinent part of statutes setting out this scheme are as follows:

Section 11791 R. S. Mo. 1929:

"*The clerk shall tax all the costs in the case against such defendant and deliver a certified copy of the same to the sheriff, who shall immediately proceed to collect such costs from the defendant, together with ten per cent. on the amount of costs, so collected, as a commission for collecting the same,*"

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Section 11822 R.S. Mo. 1929:

"Every sheriff, * shall, at the expense of their respective counties, procure a book in which a correct account of all fees collected by such officer, giving the date when collected, and in what case, giving the name of the person entitled thereto, shall be entered."

Section 11824 R. S. Mo. 1929:

"It shall be the duty of each sheriff, * on the first day of January and the first day of July in each year, to pay over all fees in their hands belonging to others to the treasurer of the county, with the name and amount belonging to each person, date when collected and in what case, *"

Section 3854 R. S. Mo. 1929:

"The county treasurers shall pay out all such fees to the proper owners as the same may be called for: PROVIDED, that before any such fees shall be paid the party to whom the same is due shall furnish satisfactory evidence to the treasurer that he or she, as the case may be, is not at the time indebted to the state or county, * "

It is, therefore, the opinion of this office that the circuit clerk has no authority to receive either the costs or fine in criminal cases. The collection of such is placed specifically in the hands of the sheriff, and immediately upon the entering of a judgment in a criminal case against the defendant the fees allowed the sheriff, including his portion of the ten per cent fee allowed in Section 11791 R. S. Mo. 1929, are attached to the costs bill and become part of the costs bill. The right of the sheriff to these fees cannot be defeated by the defendant tendering the fine and costs to the circuit clerk.

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II.

DUTIES OF THE CIRCUIT CLERK IN MAKING OUT COSTS BILLS.

In this connection, we call your attention to Section 3841 R. S. Mo. 1929, which makes it the specific duty of the circuit clerk, immediately after the adjournment of the Court, and before the next succeeding term, to tax all costs which have accrued in every case. The circuit clerk is not required to be the judge of the law and the facts in making out criminal costs bills. This duty is specifically placed upon the circuit judge and the prosecuting attorney under the provisions of Section 3842 R. S. Mo. 1929. As to the duty of obtaining correct information as to mileage and witness fees, in either civil or criminal cases, the duty of the circuit clerk is set out in Section 11799, as follows:

"The clerk of each court of record, on the application of any witness to have his fees allowed, enter on his book, under the title of the cause in which the witness was summoned or recognized, * and shall swear the witness to the truth of the facts contained in said entry, * "

The responsibility for making a false affidavit and misleading the clerk, is placed clearly upon the affiant. As to the correctness of the fees charged by an officer, the responsibility is again by law placed directly upon the shoulders of the party collecting such fees by Section 3948 R. S. Mo. 1929, which provides:

"Every officer who shall, by color of his office, unlawfully and willfully exact or demand or receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor."

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It is, therefore, the opinion of this office that it is the duty of the circuit clerk, in making out either civil or criminal costs bills, to include in such the fees sworn to by the witness, and the fees included by the sheriff in his return.

Yours very truly,

FRANKLIN E. REAGAN
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APPROVED:

ROY McKITTERICK
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